

20-1138 (Consolidated with 20-1025)

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

CHILDREN’S HEALTH DEFENSE; MICHELE HERTZ; PETRA BROKKEN;
DR. DAVID O. CARPENTER; DR. PAUL DART; DR. TORIL H. JELTER; DR.
ANN LEE; VIRGINIA FARVER, JENNIFER BARAN; PAUL STANLEY, M.Ed.

Petitioners

v.

FEDERAL COMMUNICATIONS COMMISSION;
UNITED STATES OF AMERICA

Respondents

Petition for Review of Order Issued by the
Federal Communications Commission

**UNOPPOSED MOTION TO AMEND ORDER GRANTING BILL OF
COSTS IN NO. 20-1138**

Petitioner Children’s Health Defense (“CHD”) respectfully moves the Court to amend the Order granting costs (Case No. 20-1025, Document #1914102, Filed September 14, 2021, Consolidated with Case No. 20-1138). This motion is not opposed by Respondents Federal Communications Commission (FCC) or United States of America (USA).

The Court disposed the merits by decision dated August 13, 2021. Document #1910111, reported at 9 F.4th 983. The decision remanded the FCC order under review. No party sought rehearing and the mandate issued on October 5, 2021. Document #1916917.

Petitioner Childrens' Health Defense filed its Bill of Costs on August 27, 2021. Document #1911867. The Court issued an order granting the bill of costs on September 14, 2021. Document #1914102. The order awarded the requested amount to "petitioners" (Children's Health Defense, et al).¹

Under federal regulations, all payments of costs from the United States Judgment Fund must be run through the Treasury Offset Program (TOP), which identifies individuals and entities by Employment Identification or Social Security number. In order for Petitioners to obtain payment of the bill of costs from the United States Judgment Fund, therefore, the Treasury Department requires that, in addition to Children's Health Defense (CHD), each of the CHD-aligned individual Petitioners² provide their Social Security numbers. Some of the individual CHD-aligned Petitioners are uneasy with this requirement. CHD, on its own behalf, does not have an issue providing its Employer Identification Number to the Respondents and will do so when appropriate.

As explained in the bill of costs, CHD alone – not any of the CHD-aligned Petitioners – expended the funds sought to be recovered in the CHD bill of costs.

¹ The other group of petitioners (Environmental Health Trust, et al) submitted a separate bill of costs, which was also granted. Document #1911722, #1914090.

² The CHD-aligned individual Petitioners were Michele Hertz; Petra Brokken; Dr. David O. Carpenter; Dr. Paul Dart; Dr. Toril H. Jelter; Dr. Ann Lee; Virginia Farver, Jennifer Baran; and Paul Stanley, M.Ed.

Document #1911867, pages 10-12, Declaration of W. Scott McCollough

Supporting Bill of Costs. In light of this situation, Petitioners request that the Court amend the bill of costs to direct that the funds be paid only to CHD and not to the individual Petitioners. This would align recovery with the one who expended the funds and eliminate the difficulty relating to disclosure of sensitive personal information by persons that did not make the monetary outlay.

Children's Health Defense therefore respectfully requests that the Court grant this unopposed motion and amend the second paragraph in the bill of costs order (Document #1914102) to provide: "Costs are awarded to Petitioner Children's Health Defense in the amount of \$14,351.98 and taxed against Respondents."

Respectfully submitted,

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*Counsel for Children's
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Dated: October 3, 2023

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing complies with the formatting and type-volume restrictions of the rules of the U.S. Court of Appeals for the District of Columbia Circuit. The Motion was prepared in 14-point, double spaced, Times New Roman font, using the current version of Microsoft Word, in accordance with Fed. R. App. P. 32(a)(5) and Fed. R. App. P. 32(a)(6). The Motion contains 442 words and therefore complies with Fed. R. App. P. 27(d)(2)(A).

/s/ W. Scott McCollough
W. Scott McCollough

CERTIFICATE OF SERVICE

I hereby certify that on October 3, 2023 I electronically filed the forgoing document with the Court by using the CM/ECF system. All parties to the case have been served through the CM/ECF system.

/s/ W. Scott McCollough
W. Scott McCollough